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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/084,427 | 02/28/2002 | Kuo-Liang Chen | CHEN3346/EM | 6240 |
| 23364 | 7590 | 02/02/2004 | EXAMINER | |
| BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314 | | | BHAT, NINA NMN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1761 | |

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|---------------------------------|--|
| Office Action Summary | Application No. 10/084,427 | Applicant(s) CHEN, KUO-LIANG | |
| | Examiner N. Bhat | Art Unit 1761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, applicant recites "mixing cold/hot elastic powder" which is an unduly broad recitation, which reads on materials neither contemplated nor disclosed by applicant. It is unclear what applicant means by "cold/hot elastic powders", does applicant mean gelatin or starch or flours, polymers or rubbers? In step "(d)", "or sale in package" should be packaged; the fact the product can be sold does not further limit the method. Packaged in the food art inherently means that the product can be packaged for commerce. In step "(f)", "cating" should be --coating--. In claim 2 and 3 it is unclear what applicant means by high order starch. Applicant should correct this ambiguity in the specification as well perhaps by indicating what is meant by "high order starch" by listing the type of starch contemplated perhaps using Markush language to list the type of starches which can be used in the method. Applicant is cautioned not to add new matter into the specification. In claims 2-3 "the materials" and "synthesized vegetal glue and high order starch" lack positive antecedence.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4 are rejected as being rejected under 35 U.S.C. 103(a) as being unpatentable over Janovsky et al.

Janovsky et al. teach making a marshmallow confection, which is heat, stable which includes microcrystalline cellulose (MCC) and includes vegetal material, which replaces the gelatin with the vegetal gum. The MCC can be co processed with other polysaccharides which include konjac, carrageenan, pectin, locust bean, maltodextrin, xanthan, agar and combinations there of. The gel forming gums used to replace the gelatin are natural gums of vegetal origin which include carrageenan, pectin, gellan, algin, and alginates, xanthan, konjac and mixtures thereof. Carrageenan and konjac gel forming gums being the preferred natural gums used in the composition. The marshmallow teach making a marshmallow confection which includes modified corn starch, corn starch, cellulose gel and carrageenan, the marshmallow is heat stable and can be extruded, as well as coated with a reduced fat chocolate coating which shown in Example 2 wherein a reduced calorie chocolate coated marshmallow cookie is described.[Note Column 3, lines 56-67 and Column 3, lines 63-67] Janovsky teaches mixing the starch and vegetal material with water and other ingredients, heating and

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then molding the composition into a slab and then cutting or extruding the marshmallow confection into smaller pieces.

However, Janovsky does not teach the vegetal glue to high order starch ratio.

Janovsky teaches providing a marshmallow/gel composition, which comprises mixing, and elastic powder with water, heating the mixture, molding and coating the extruded product. Specifically Janovsky teaches a marshmallow composition which includes the vegetal material and starch which is admixed with water and corn syrup, which is homogenized and then heated to 190°F (88°C) adding trisodium phosphate, flavor and titanium dioxide which is then whipped and then extruded onto a surface, such as a cookie or any other type of surface the extruded marshmallow can be subsequently coated with a reduced chocolate coating. Janovsky teaches that the cookie is cooled prior to packaging.[Note Column 7, lines 40-55]. Thus to adjust the ratio of starch to vegetal material to provide a gelled product as claimed by applicant would have been obvious to one having ordinary skill in the art at the time the invention was made because Janovsky teaches adding co processing a starch and CMC or MCC to provide a heat stable marshmallow, further Janovsky teaches that the gelatin normally used in making marshmallows can be replaced with a vegetal material to make a gelled, soft chewy confectionery product, to adjust the ingredients of vegetal material and starch to provide best results in preparing a gelled or soft chewy confectionery would have been obvious to one having ordinary skill in the art from the teachings of Janovsky absent criticality in showing.

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5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Grazela et al. teach a gelatin free gummy confection using gellan gum and carrageenan. Barret et al. teach a chew confection product, which includes oxidized starch in combination with gums such as gum arabic as a replacement for all, or part of the gelatin in a chewy sweet confectionery product. Winston, Jr. et al. teach a composition and process for preparing soft capsules, which are made from a blend of gellan gum and carrageenan/mannan gum. Hansen et al. teach carrageenan compositions. Sanderson et al. teach low acetyl gellan gum blends. Sugino et al. and Konstance teach simulated lobster or surimi analogs which includes modified mannan gel and carrageenan in making the analog.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 571-272-1397. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.



N. Bhat
Primary Examiner
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